

Judge: Timothy W. Dore
Chapter: 13
Hearing Date: January 07, 2015
Hearing Time: 9:30 a.m.
Hearing Location:
U.S. Bankruptcy Court
700 Stewart St #8106
Seattle, WA 98101
Response Date: December 31, 2014

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

ANTONIO FRANCINE FLIGHT and
KIM LYNNICE FLIGHT,
Debtor(s).

IN CHAPTER 13 PROCEEDING
NO. 14-16434-TWD

OBJECTION TO MOTION FOR ORDER
VACATING DISMISSAL

K. Michael Fitzgerald, Chapter 13 Trustee, objects to the debtors' Motion for Order Vacating Dismissal (ECF No. 41):

The Trustee objected (ECF No. 29) to confirmation of the debtors' plan (ECF No. 2). Bank of America also objected (ECF No. 26) to the debtors' plan. On October 28, 2014, the Trustee moved to dismiss the debtors' case (ECF No. 28). On behalf of the Trustee, Premium Graphics served the Trustee's motion (debtors' counsel received notice by ECF) (ECF No. 31). The Trustee's notice of motion specifically indicated that written responses were due by December 10, 2014 (ECF No. 28).

Each party opposing a motion shall file and serve responsive papers not later than seven days prior to the date set for hearing. Local Bankr. R. 9013-1(d)(5). The hearing date was December 17, 2014 (ECF No. 28). The debtors did not respond to the Trustee's motion and the Court dismissed the debtors' case on December 12, 2014.

The debtors offer no explanation why they failed to respond to the Trustee's motion. The debtors' asserted bases for the motion are inadequate. The debtors have not asserted any authority for the Court to vacate the dismissal order. Even assuming the debtors had properly asserted authority, there is no mistake, inadvertence, surprise, excusable neglect or any other

OBJECTION TO MOTION FOR ORDER
VACATING DISMISSAL - 1

Chapter 13 Trustee
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1 reason that would justify the requested relief. Fed. R. Civ. P. 60(b); Fed. R. Bankr. P. 9024. For
2 whatever reason, the debtors simply decided not to respond to the motion.

3 The debtors indicate that “Debtor’s attorney has been going back and forth with
4 Springleaf for a Month to get a correct amount for the Debtors to bring their 2nd mortgage
5 current. *The Debtors have finally received the correct amount on December 10, 2014*” (ECF No.
6 41) (emphasis added). The response date for the Trustee’s motion was December 10, 2014. The
7 debtors could have filed a response on December 10, 2014 and, if they had, the Trustee would
8 not have submitted a default dismissal order and the Court would not have signed the order. The
9 proper administration of cases depends on the debtors being responsive to their own case. The
10 debtors have not established any basis for their motion and the debtors’ own assertions seem to
11 conflict with any assertion that they could not respond to the motion.

12 Finally, the Court ordered debtors to file an objection to Springleaf’s proof of claim by
13 November 14, 2014 if the debtors disputed the claim (ECF No. 35). The debtors did not file an
14 objection to Springleaf’s claim. The debtors assert that “Debtor’s [sic] attorney couldn’t file an
15 objection to the proof of claim because of the conflicting information from Springleaf” (ECF No.
16 41). That is an unusual statement. If Springleaf was asserting conflicting information, that
17 would seem all the more reason why the debtors could file a claim objection.

18 In sum, the debtors’ case should remain dismissed. The Trustee reserves the right to
19 assert additional bases for his objection.

20 WHEREFORE, the Chapter 13 Trustee requests that the Court deny the debtors’ Motion
21 for Order Vacating Dismissal.

22 Dated this 18th day of December, 2014

23
24 /s/ Jason Wilson-Aguilar, WSBA #33582 for
25 K. MICHAEL FITZGERALD
26 Chapter 13 Trustee
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